

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Vernal District Field Office

170 South 500 East

Vernal, Utah 84078-2799

<http://www.blm.gov/utah/vernal>

Phone: (435) 781-4400

Fax: (435) 781-4410

IN REPLY REFER TO:

3809

(UT08300)

U66354

MAY 10 2001



Hand-Delivery

DECISION

Mr. Norman Haslem
2041 South 2000 East
Vernal, Utah 84078

- : Prior Notice of Noncompliance ordering
- : reclamation of project area under notice
- : UTU66354 modified extending time to reclaim

Background

Our office issued a notice of noncompliance (enclosure). This notice was sent by certified mail. On December 4, 2000 the notice was returned to this office as unclaimed. The local Post Office did provide you several opportunities to claim this certified correspondence. We recently granted an extension of time for operators of record to reclaim two nearby project areas. The extension were granted in the matters of surface management cases UTU66357 (Bluebell Oil Co. operator) and UTU66358 (Hiko Bell Mining & Oil Co. operator). Accordingly, I am modifying the attached notice of noncompliance, extending the time to reclaim [under paragraph 1 on the second page of the enclosure] from May 1, 2001 to June 30, 2001.

Advisories

Mr. Craig Caldwell has informed us that you set up placer processing equipment on Bluebell Oil Company's project area (case UTU66357). Bluebell Oil Co. has been ordered to remove that equipment as part of reclaiming their project area. If you do have equipment on the Bluebell project area, you are responsible for its prompt removal from public lands. Failure to do so may result in it being declared as abandoned. This would lead to its impoundment and disposal by the BLM.

As operator of record, you are responsible for promptly advising this office of any changes in address [pursuant to 43 CFR 3809.1-3(c)(1)].

What are the consequences of failing to comply?

Failure to comply will result in the issuance of a record of noncompliance under the provision of 43 CFR 3809.3-2. During the term of a record of noncompliance, you would be required to file a plan of operation and 100 percent reclamation bond in the matter of surface management case UTU66354 and any other operation, other than under casual use, conducted by you on any lands administered by the BLM.

Can you appeal this decision?

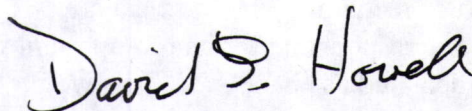
You have the right of appeal the extension of the period to reclaim to the Utah State Director, Bureau of Land Management (P.O. Box 45155, Salt Lake City, Utah 84145-0155), in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing to this office (Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078) within 30 days from the receipt of this decision. This decision will remain in effect during the appeal unless a written request for a stay is granted. If you wish to file a petition pursuant to 43 CFR 3809.4(b) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the State Director, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based upon the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely



David E. Howell
Field Manager

enclosure

cc: Lead claimant of record Pebble Puppy #1-A & 2-A (UMC's 366391 & 366392)
Utah Div. of Oil, Gas, and Mining
Utah State Office UT93513



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Vernal District Field Office

170 South 500 East

Vernal, Utah 84078-2799

<http://www.blm.gov/utah/vernal>

Phone: (435) 781-4400

Fax: (435) 781-4410

IN REPLY REFER TO:

3809

(UT08300)

U66354

NOV 14 2000

Certified Mail

Return Receipt Requested

7000 0520 0020 3027 0598

Mr. Norman Haslem

2041 South 2000 East

Vernal, Utah 84078

NOTICE OF NONCOMPLIANCE

Failure to Reclaim Timely

You are the operator of record to the project area under notice UTU66354 according to your October 18, 1995 letter to this office. This project area is located in Lots 6, 13 and W2SENW of Section 6, T.5S., R.24E., SLM. Our office identified what you would be responsible for as an operator of record in a letter dated November 29, 2000. The project area had been inactive for some years before the change of operator filing. The last mineral extraction operation within the project area was noted in August 1989. Soon after that time, placer mining equipment was removed from the project area.

Inspections conducted on December 12, 1996, October 2, 1997, November 9, 1999, July 20, 2000 and October 23, 2000, after you became operator, reveal the project area has remained in essentially the same inactive state as when you became operator. The only exception was that the December 1996 inspection revealed some sand and gravel material had been removed from the northern part of the project area and a grizzly screen was situated nearby. The material removed was apparently processed outside of your project area.

Our office communicated with you about your project area in letters dated May 21, 1997, October 14, 1998, April 14, 1999, January 22, 1999 [this was a courtesy copy to you of a letter to Robert Covington], July 23, 1999, November 19, 1999, March 30, 2000 (returned as unclaimed by you) and April 25, 2000. The certified letter of November 19, 1999 requested submission of a reclamation plan due to the fact the project area has been in an inactive state for about ten years and that the regulations

require reclamation at the earliest feasible time after cessation of operations. This correspondence also warned of that a notice of noncompliance could be issued if we did not receive information about your plans for reclamation. To date, we have received no communications from you as operator.

The surface management regulations state that "At the earliest feasible time, the operator shall reclaim the area disturbed,...", 43 CFR 3809.1-3(d)(3). Because there has been no activity within your project area for over ten years and disturbances within your project area, both the placer mining area and seven test pits have been in an unreclaimed state for over ten years, the following is ordered.

1. All surface disturbances within the area of past placer mining (purple colored area on enclosure 1) is to undergo reshaping, redistribution of topsoil, and seeding on or before May 1, 2001. The southeastern part of the project area, while generally reshaped and apparently covered by stockpiled topsoil, has to be seeded as undesirable vegetation has been noted in that area (see notation on enclosed figure). The test pits (black X's on enclosure 1) are to be refilled and seeded on or before June 1, 2001. Since travel off established roads to many of the test pits may be necessary, you are required to reclaim disturbances caused by cross country travel of equipment used to fill in and seed these test pits. You may not blade or otherwise improve paths of cross country travel. In addition to the minimum standards for reclamation under 43 CFR 3809.1-3(d)(4) (see highlight on page 703 of enclosure 2) the guidelines for reclamation found in our correspondence dated April 14, 1999 (enclosure 3) and as well as items a. through f. (below) shall be followed.

a. The operator is responsible for the control of noxious weeds and invasive non-native plants within the areas to be reclaimed (locations shown on enclosed figure). This includes the tamarisk which is growing in the dried settling pond area in the southwest part of the project area (identified on enclosure 1). The control method you employ must be discussed in advance with the Noxious Weed Control Coordinator at the Vernal Field Office.

b. The only exception to item 1. is that you are not responsible for the reclamation of the two-track roadway (dark dashed line on enclosure 1). This road is part of surface management notice UTU66358 and that operator is responsible for its reclamation.

c. Seed used in reclamation must be noxious weed free as per Utah Department of Agriculture regulations. You should ask the seed vendor for written confirmation of the content of the seed used in reclamation along with a statement that it meets Utah Department of Agriculture requirements as being noxious weed free. A copy of these documents shall be provided to the Vernal Field Office within 5 working days of the initiation of seeding.

d. Less than 10,000 pounds of any chemical(s) from EPA's Consolidated list of Chemicals Subject to Reporting Under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, and less than the Threshold Planning Quantity (TPQ) of any extremely hazardous substance(s), as defined in 40 CFR 355, shall be used, produced, transported, stored, disposed, or associated with the reclamation operations. Vehicle and equipment fuel,

lubricants, antifreeze and battery acid would be the only hazardous materials used or associated with the reclamation. You will reduce risks of damages as a result of releases by immediately cleaning up any spills of fuels, lubricants, antifreeze or battery acids; and disposing of such in an approved waste disposal facility.

e. The operator shall notify the Vernal Field Office at least two working days prior to the commencement of reclamation and no later than two working days following the completion of reshaping, redistribution of topsoil, filling of test pits and initial seeding of all disturbances, which ever comes last.

f. Following the above steps and notification under 1.d., the Vernal Field Office and the operator will periodically inspect the area to determine the degree of stability and monitor the revegetation of the area. If any stability or vegetation problems are identified, the operator shall be responsible for correcting such. If, after two growing seasons the area is stable and the density of native vegetation is comparable to surrounding undisturbed lands, the BLM would close the surface management case.

Failure to comply will result in the issuance of a record of noncompliance under the provision of 43 CFR 3809.3-2. During the term of a record of noncompliance, you would be required to file a plan of operation and 100 percent reclamation bond in the matter of surface management case UTU66354 and any other operation, other than under casual use, conducted by you on any lands administered by the BLM.

You have the right of appeal to the Utah State Director, Bureau of Land Management (P.O. Box 45155, Salt Lake City, Utah 84145-0155), in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing to this office (Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078) within 30 days from the receipt of this decision. This decision will remain in effect during the appeal unless a written request for a stay is granted. If you wish to file a petition pursuant to 43 CFR 3809.4(b) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the State Director, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based upon the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

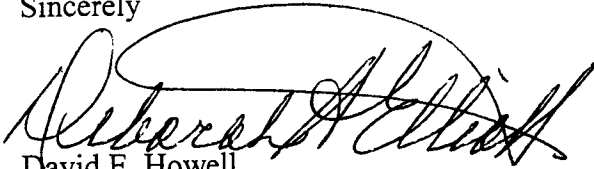
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:


- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on its merits,

- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely



David E. Howell
Field Manager



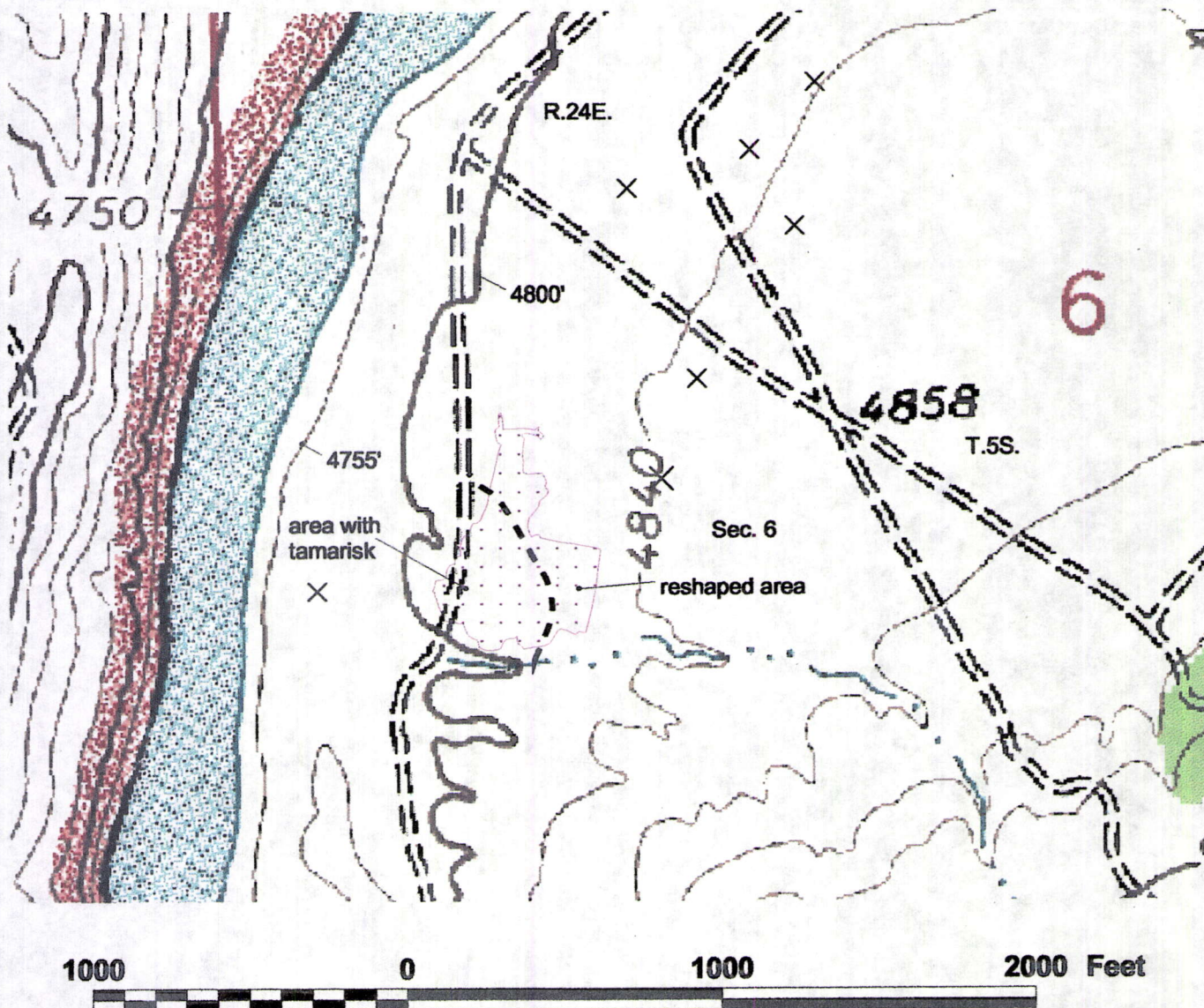
enclosures

cc: Lead claimant of record Pebble Puppy #2-A (UMC 366392)
Utah Div. of Oil, Gas, and Mining
Utah State Office UT093100

PSokolosky|pks|11-13-2000|66354_11_00_non.wpd

bcc: reading file
surface management case file UTU66354

Enclosure 1 to Notice of noncompliance letter regarding surface management notice UTU66354



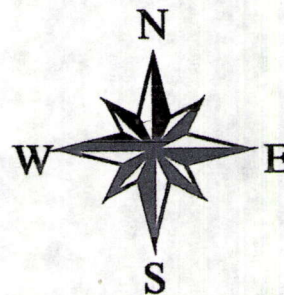
test pits

- X 1
- X 2
- X 3
- X 4
- X 5
- X 6
- X 7

access road

Area of past placer
mining

scale 1:5000, contour interval - 40 ft
project area and pit locations determined
by use of GPS instrument



No warranty is made by the
Bureau of Land Management
for use of any of the data for
purposes not intended by the
Bureau of Land Management.

otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4-7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4-8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land

Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this subpart 3802 are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 may of this title be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.

(b) When you submit data and information under this subpart 3802 that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

[63 FR 52954, Oct. 1, 1998]

Subpart 3809—Surface Management

SOURCE: 45 FR 78909, Nov. 26, 1980, unless otherwise noted.

NOTE: The information collection requirements contained in this subpart have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0104. This information is needed to permit the authorized officer to determine if a plan of operation is needed to protect the public lands and their resources and to determine if the plan of operations, if one is required, is adequate. The obligation to respond is required to obtain a benefit. (See 48 FR 8816, Mar. 2, 1983.)

GENERAL

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of Federal

lands which may result from operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the Federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on Federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the Federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining

claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by Section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y-8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

[45 FR 78909, Nov. 26, 1980, as amended at 59 FR 44856, Aug. 30, 1994]

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) *Casual Use* means activities ordinarily resulting in only negligible disturbance of the Federal lands and resources. For example, activities are generally considered *casual use* if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed to off-road vehicles as defined in subpart 8340 of this title.

(c) *Federal lands* means lands subject to the mining laws including, but not limited to, the certain *public lands* defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National

Forest Service
life Refuge
acquired
stead of
mineral
United
ness Re
Bureau
lands and
3802 reg

(d) unpatented
tunnel
laws and
and mil
Desert
been pa
ment of
Manage
(e) M
of July
251); the
amende
Law of
Stat. 9
and an
among
of Augu
348); an
ary 31, 1

(f) O
work, f
nection
and ass
traction
posits l
and all
thereto
not, in
constru
lines, p
cess for
eral lar
(g) C
ducting
ations.

(h) P
United
clared
and in
ship, co
legal ei

(i) Pr
land up
be, con
clude c
mining
which
ducted.

der the min-
tes shall not
e to patent
other than
essing oper-
ly incident

and Scenic
(10) provides
all, among
safeguards
ers involved
ent of the
esignated for
an actual
wild and

21, 1970 (16
ded by Sec-
Policy and
(16 U.S.C.
ing Range
ornia. The
these Acts
s conserva-
al Mining
as to pro-
d environ-
ue impair-
ollution of

ended at 59

term:
s any em-
d Manage-
been dele-
described

ities ordi-
gible dis-
s and re-
ities are
se if they
echanized
xplosives
notorized
as closed
d in sub-

s subject
but not
lands de-
ral Land
of 1976.
lands in
National

Forest System, and the National Wild-
life Refuge System, nor does it include
acquired lands, Stockraising Home-
stead lands or lands where only the
mineral interest is reserved to the
United States or lands under Wilder-
ness Review and administered by the
Bureau of Land Management (these
lands are subject to the 43 CFR part
3802 regulations).

(d) *Mining claim* means any
unpatented mining claim, millsite, or
tunnel site located under the mining
laws and those patented mining claims
and millsites located in the California
Desert Conservation Area which have
been patented subsequent to the enact-
ment of the Federal Land Policy and
Management Act of October 21, 1976.

(e) *Mining laws* means the Lode Law
of July 26, 1866, as amended (14 Stat.
251); the Placer Law of July 9, 1870, as
amended (16 Stat. 217); and the Mining
Law of May 10, 1872, as amended (17
Stat. 91); and all laws supplementing
and amending those laws, including
among others the Building Stone Act
of August 4, 1892, as amended (27 Stat.
348); and the Saline Placer Act of Janu-
ary 31, 1901 (31 Stat. 745).

(f) *Operations* means all functions,
work, facilities, and activities in con-
nection with prospecting, discovery
and assessment work, development, ex-
traction, and processing of mineral de-
posits locatable under the mining laws
and all other uses reasonably incident
thereto, whether on a mining claim or
not, including but not limited to the
construction of roads, transmission
lines, pipelines, and other means of ac-
cess for support facilities across Fed-
eral lands subject to these regulations.

(g) *Operator* means a person con-
ducting or proposing to conduct oper-
ations.

(h) *Person* means any citizen of the
United States or person who has de-
clared the intention to become such
and includes any individual, partner-
ship, corporation, association, or other
legal entity.

(i) *Project area* means a single tract of
land upon which an operator is, or will
be, conducting operations. It may in-
clude one mining claim or a group of
mining claims under one ownership on
which operations are or will be con-
ducted, as well as Federal lands on

which an operator is exploring or
prospecting prior to locating a mining
claim.

(j) *Reclamation* means taking such
reasonable measures as will prevent
unnecessary or undue degradation of
the Federal lands, including reshaping
land disturbed by operations to an ap-
propriate contour and, where nec-
essary, revegetating disturbed areas so
as to provide a diverse vegetative
cover. Reclamation may not be re-
quired where the retention of a stable
highwall or other mine workings is
needed to preserve evidence of min-
eralization.

(k) *Unnecessary or undue degradation*
means surface disturbance greater than
what would normally result when an
activity is being accomplished by a
prudent operator in usual, customary,
and proficient operations of similar
character and taking into consider-
ation the effects of operations on other
resources and land uses, including
those resources and uses outside the
area of operations. Failure to initiate
and complete reasonable mitigation
measures, including reclamation of dis-
turbed areas or creation of a nuisance
may constitute unnecessary or undue
degradation. Failure to comply with
applicable environmental protection
statutes and regulations thereunder
will constitute unnecessary or undue
degradation. Where specific statutory
authority requires the attainment of a
stated level of protection or reclama-
tion, such as in the California Desert
Conservation Area, Wild and Scenic
Rivers, areas designated as part of the
National Wilderness System adminis-
tered by the Bureau of Land Manage-
ment and other such areas, that level
of protection shall be met.

(1) *King Range Conservation Area*
means the area designated pursuant to
the Act of October 21, 1970 (16 U.S.C.
460y *et seq.*), as amended by Section 602
of the Federal Land Policy and Man-
agement Act of 1976 (16 U.S.C. 460y-8).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec.
17, 1980, as amended at 48 FR 8816, Mar. 2,
1983; 59 FR 44856, Aug. 30, 1994]

§ 3809.0-6 Policy.

Consistent with section 2 of the Min-
ing and Mineral Policy Act of 1970 and
section 102(a) (7), (8), and (12) of the

Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of Federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) Federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the Federal lands and to provide for reasonable reclamation.

§ 3809.0-9 Information collection.

(a) The collections of information contained in subpart 3809 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0176. BLM will use the information in regulating and monitoring mining and exploration operations on public lands. Response to requests for information is mandatory in accordance with 43 U.S.C. 1701 *et seq.*, The information collection approval expires December 31, 1999.

(b) Public reporting burden for this information is estimated to average 16 hours per response for notices and 32 hours per response for plans of operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Attention Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, referring to information collection clearance number 1004-0176.

[62 FR 9099, Feb. 28, 1997]

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use: Negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of Federal lands will not occur.

§ 3809.1-3 Notice: Disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under paragraph (c)(3) of this section when the construction of access routes are involved. Notices properly filed under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When a mining claim assigned to a recorded pursuant to title on which take place a

(3) A state ties propose efficient detail the ground, date when statement s and location structured and be used in routes shall minimum w and shall where pract fill. When routes involve cuts on the feet, the o; consult with cerning the of the ac mencing op

(4) A star all areas di the standar this title a; will be tak; undue degr during ope;

(d) The activities c

(1) Acces only the m erations a; tours, whe cut and fill

(2) All materials waste prod be disposed sary or un cordance v State Law

(3) At th operator s turbed, ex to preserv by taking vent or damage of

(4) Recl shall not b

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1-3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the Federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3-2 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.1-4 Plan of operations: When required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1-3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) Lands in the California Desert Conservation Area designated as *controlled* or *limited* use areas by the California Desert Conservation Area plan;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas designated as *closed* to off-road vehicle use as defined in subpart 8340 of this title.

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

(c) Plans properly filed and approved under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983; 59 FR 44856, Aug. 30, 1994]

§ 3809.1-5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the Federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1-3(d) of this title. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such

measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the

bureau or
agement re
sponsibilit
reau of L
plan appro
shall obta
appropriat
conditions
vent unne
tion.

(c) The
dertake a
tural resou
be disturb
completed
these regu
plan (30 d
quired to
hire an ar
Bureau of
to comple
tiously. T
of salvage
ered durin
Federal C
bility of
those cu
during the
ator's.

(d) Pen
plan, the
prove any
essary for
quirement
subject to
that may
essary or

(e) In th
tors invol
erations,
the requi
title as it

[45 FR 78909, Nov. 26, 1980]

§ 3809.1-7

(a) At
under an
on his/her
the plan
request th

(b) A si
approved
approved
the same

(c)(1) If
the auth
does not
tion with

submits recommended authorized officer's plan necessary or reclamation operator, or in conjunction all become a

ns. during operation to the land to adverse impact of plan on shall be officer when- es a period

FR 82934, Dec.

operations authorized officer's knowledge or. The au- 30 days of proposal in to prevent degradation reclamation operator:

ed; or additions to the require-

r reviewed, t of time, 60 days, is review, set- which jus- view. How- area of op- inspection computing

approved environ- prepared ental Pro-

approved has com- National section 7

shall con- al of the

bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1-9 of this title as it relates to bonding.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually

30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the Federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1-8 Existing operations.

(a) Persons conducting operations on January 1, 1981, who would be required to submit a notice under § 3809.1-3 or a plan of operations under § 3809.1-4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1-

3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1-4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the Federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

[64 FR 53219, Oct. 1, 1999]

§ 3809.1-9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1-2) or that are conducted under a notice (§ 3809.1-3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1-5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1-7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands

shall co
the app
this sub
issued
boundar
Conserv
title).

[64 FR 53

§ 3809.2
und

§ 3809.2-

(a) W
operatio
tion wh
viously
the aut
environ
ment th
the pro
and to
mental

(b) In
the aut
vironm-
the ade
and rec
the plan
necessa
land. If
ized off
pare m
ized off
erator,
sessmer
operato

(c) If
mental
cer dete
public i
ized off
writing
time, n
days pr
§ 3809.1-
conside
ronmen

[45 FR 7
17, 1980.
1983]

§ 3809.2-
viro

All o
and op
(§ 3809.1-
(§ 3809.1-
ducted

ne operator
n a Federal
he United
l by the au-
an amount
amount of
ities of the
arket value
t less than
of the bond.
ual bond on
a blanket
nationwide
at the op-
terms and
by the au-
nt to com-

of the rec-
ted in ac-
plan, the
thorized of-
n has oc-
s a reduc-
oval of the
n, or both.
n, the au-
ly inspect
e operator.
then notify
hether the
When the
ed as com-
clamation,
authorize
proportion-
g reclama-

s patented,
elease the
of the per-
s to oper-
es of the
ed officer
om the re-
bond, in-
approved
boundaries
e operator
clamation.
patented
eral lands

shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6 of this title).

[64 FR 53219, Oct. 1, 1999]

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2-1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is *substantial public interest* in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan in § 3809.1-6 of this title, is required to consider public comments on the environmental assessment.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.2-2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or

undue degradation of the Federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and paleontological resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of

cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.3 General provisions.

§ 3809.3-1 Applicability of State law.

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on Federal lands under the mining laws.

(b) After November 26, 1980, the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the Federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible,

provide for State administration and enforcement of such programs.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 62 FR 9102, Feb. 28, 1997; 64 FR 53220, Oct. 1, 1999]

§ 3809.3-2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1-3 of this title or a plan of operations under § 3809.1-4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of non-compliance shall be served in the same manner as described in § 3809.3-2(b)(1) of this section.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 of this title on Federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the

actions the non exceed action

(e) F necess. compli tion fo plan o this ti subseq otherw notice

[45 FR 17, 1980 1997; 64

§ 3809.3

(a) A to his sions c

(b) V ations locatic and ot vent tion. require t to mi routes access portat comm use of author erator ments

§ 3809.3

The applic and re sonabl press f

§ 3809.3 saf

Duri shall ment, orderly condit shall otherw in acc and St

ration and
is.

82934, Dec.
102, Feb. 28,

Bureau of Land Management, Interior

actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under §3809.1-5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under §3809.1-3 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 62 FR 9103, Feb. 28, 1997; 64 FR 53220, Oct. 1, 1999]

§3809.3-3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§3809.3-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§3809.3-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§3809.4

§3809.3-6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§3809.3-7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

§3809.5

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

[45 FR 78909, Nov. 26, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR part 2.

§3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject

43 CFR Ch. II (10-1-99 Edition)

to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

Sec.

3811.1 Lands: General.

3811.2 Lands: Specific.

3811.2-1 States where locations may be made.

3811.2-2 Lands in national parks and national monuments.

3811.2-3 Lands in Indian reservations.

3811.2-4 Lands in national forests.

3811.2-5 O and C and Coos Bay Wagon Road lands.

3811.2-6 Lands in powersite withdrawals.

3811.2-9 Lands under Color of Title Act.

Subpart 3812—Minerals Under the Mining Laws

3812.1 Minerals subject to location.

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

3813.0-3 Authority.

3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.

3813.2 Minerals subject to disposition.

3813.3 Provision of the mineral patent.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

3814.2 Mineral reservation in patent; conditions to be noted on mineral applications.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

3815.1 Mineral locations.

3815.2 Prospecting and mining.

3815.3 Surface limitation.

3815.4 Protection of stock.

3815.5 Access to stock watering places.

3815.6 Locations subject to mining laws.

3815.7 Mining claims subject to stock driveway withdrawals.

3815.8 Notation required in application for patent; conditions required in patent.

Bureau of

Subpart
Re

3816.1 Min.
3816.2 App.
3816.3 Rec.
lamatio
3816.4 Rec.
and con

AUTHORITY
1201 and 174

Subpart
Loc

SOURCE: S
otherwise n

§3811.1 L

Vacant
unsurveye
prospectin
mineral, t
Act of Ju
vides that
forest res
which ma
subject to
mining la
the rules
thereto, s
such loc
standing
mineral l
the publi
tion and
ing laws
entered
stockrai
mineral
necessar
acquire
agricult
where
ably ar

§3811.2

§3811.1
be

(a) I
the S
sas,
Idaho
tana,
North
Utah

(b)
latir
to A



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Vernal Field Office
170 South 500 East
Vernal, Utah 84078-2799
<http://www.blm.gov/utah/vernal>

Phone: (435) 781-4400
Fax: (435) 781-4410

IN REPLY REFER TO:

3809

(UT083)

66354

66357

66358

APR 14 1999

Dear Operator of Record:

Thank you for meeting with me on the locations of past placer mining (termed "project areas" by the BLM) for which the Blue Bell (UTU66357), Norman Haslem (UTU66354), and Hiko Bell (UTU66358) are the operators of record. The following recaps some information from our on-site.

Bluebell project area (most northerly site with wooden building, some placer equipment present, and electrical panel present). You informed me that mining and processing operations are to resume on this site within the foreseeable future and you would provide our office written information about the renewal of operation on this site. It is important to make sure

- that the operations planned conform to the written description of operations contained in notices which are part of the BLM file. The operator of record, Bluebell Oil Company must submit information, in writing to the BLM at least 15 calendar days before the conduct of operations different than what is in the BLM surface management [notice] case file (the file is available at this office for you review and you are encouraged to review it before resuming operations). Some items not part of the notice on file include the wooden building*, the underground routing of electrical power from a nearby power company power pole, and the storage of miscellaneous equipment on site.

* you should review the provisions of 43 CFR 3715 to determine if this structure would come under the provisions of the "Use and occupancy" regulations and make appropriate filings with this office. These regulations contain information about what is required if you wish to keep a watchman posted on location.

- the seed mix which should be used in reclamation is as follows

Indian Ricegrass	3 lbs/acre
Needle and Thread grass	2 lbs/acre
Shadscale	3 lbs/acre
Fourwing Saltbush	4 lbs/acre

(Double the lbs/acre rate if seed is broadcast; seed needs to be covered after application, pounds are in pure live seed).

(Bluebell project area continued)

- the operator is responsible for complying with all applicable State and Federal rules and regulations (other than just filing a notice with the BLM). During our on-site, you were provided with a copy of the 43 CFR 3809 regulations (also known as the surface management regulations) and a list of other regulatory agencies. You may have to obtain a water right permit to extract water from the Green River (see information about water depletion which the U.S. Fish and Wildlife oversees), a discharge permit for water return to the Green River from the settling pond, post caution signs for the underground routing of AC power to the placer plant, etc. It would be helpful to provide our office a copy of permits [you have to operate] from other agencies and to keep such posted on location when operations are underway.
- you should notify us when operations are about to resume and to advise us who the on-site point of contact is when operations are underway and copies of all permits and notices posted with the BLM should be maintained on site.

Haslem project area (south of the Bluebell project area and includes seven open test pits). The areas of disturbance and availability of oversize material for filling in low areas and topsoil type materials for use as a seed bed were reviewed. A map showing the outline of the project area and the location of test pits were presented. The seed mix list presented is now changed, see mix cited above. It was also pointed out that part of the project area east of the access road had apparently been reshaped and appears to be revegetating, but that the operators of record have never asked the BLM to inspect it. We will review reclamation of this site as part of future BLM inspections of the reclamation of other parts of the project area. Regarding the reclamation efforts we appreciate

- you notifying us when a) reclamation is scheduled to begin, b) when reshaping and filling of test pits has been accomplished and c) when seeding has been accomplished
- ripping surfaces which have obviously undergone compaction, such as the north-south two tracked access through the eastern part of the project area.

Our office monitors reclaimed sites for stability and revegetation for a period of two years after reshaping and seeding. The operator should also periodically monitor the area after reshaping and seeding and should take remedial actions if the area is becoming unstable or is not revegetating (and to advise the BLM office if you take such actions).

Hiko Bell project area (south of the Haslem project area). The bounds of the disturbances within the project area and sources of materials which can be used in the reclamation effort were reviewed. A substantial amount of oversized material which could be used in reshaping efforts, was placed in the drainage between the Haslem and Hiko Bell project areas during past Hiko Bell operations. The need to remove miscellaneous equipment left on site was also discussed. Please see the change in seed mix above, the requests that you notify this office at

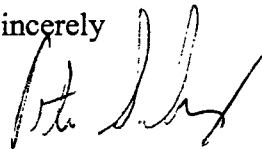
various stages of your reclamation effort, and the ripping of compacted surfaces. Hiko Bell and Mr. Haslem need to coordinate the travel of reclamation equipment over their respective project areas.

During the on-site, packets of information were presented to Mr. Haslem and Mr. Caldwell containing project area boundary maps, information about seeding requirements, the weed-free hay and straw policy of the BLM, a copy of the latest 43 CFR 3809 regulations, information about the suspension of a section of those regulations, a copy of a list of other regulatory agencies, and a copy of a book about reclamation, and a section of oil and gas gold book about reclamation.

Please keep in mind that the surface management cases (UTU 66354, 66357 and 66358) for the three project areas are available for your review at this office. In the case of the Haslem and Hiko Bell project areas, the cases contain photo-documentation about what the prior operators of record disturbed (disturbances you assumed responsibility to reclaim as the current operator). We also have aerial photographs which would be of assistance in seeing what very old disturbances may also occur in the area (disturbances for which the operator of record is not responsible for reclaiming). Our Operations Division has been informed about the need to maintain the roadway leading to the project areas. I will inform you about the scheduling of road maintenance. It would be helpful for you to advise me of the type of transport which would be utilized to haul the dozer or other reclamation equipment to the project areas so our office can better plan for the maintenance of the roadway.

You can contact me if you have any questions about this letter, BLM regulatory requirements, or the information distributed to you during the on-site.

Sincerely



Peter K. Sokolosky
Geologist

cc: Craig Caldwell (for Bluebell Oil Co. and Hiko Bell)
Norman Haslem
Bud Covington (for Hiko Bell)

PSokolosky|pks|4-14-99|66354_et al_4_99_ltr

bcc: reading file
surface management case files 66354, 66357, 66358